

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JOEY E. MCGOVERN, on behalf of
KATHY MCGOVERN, deceased,**

Plaintiff,

vs.

No. CIV 10-104 JCH/WDS

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

AGREED ORDER AWARDING ATTORNEY FEES UNDER EAJA

THIS MATTER having come before the Court upon Plaintiff's Motion for Attorney Fees under Equal Access to Justice Act (Doc. # 27), and Defendant having no objection to the Motion (Response, Doc. # 28), the Court FINDS that the Motion for Attorney Fees should be granted.

IT IS THEREFORE ORDERED that attorney fees be, and hereby are, awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), payable to Plaintiff in the amount of \$7,179.82. *See Astrue v. Ratliff*, 130 U.S. 2521 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580

(10th Cir. 1986).

DATED this 14th day of November 2011.

A handwritten signature in black ink, appearing to read 'W.D. Schneider', is written above a horizontal line.

W. Daniel Schneider
United States Magistrate Judge